

28 JUL 2004



UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. Box 1450
ALEXANDRIA, VA 22313-1450
www.uspto.gov

Nixon & Vanderhye P.C.
1100 North Glebe Road, 8th Floor
Arlington, VA 22201-4714

In re Application of VROUENRAETS et al :
U.S. Application No.: 09/980,088 :
Int. Application No.: PCT/GB00/01215 :
Int. Filing Date: 30 March 2000 :
Attorney Docket No.: 1626-3 :
For: PHOTODYNAMIC THERAPY COMPOUNDS :

DECISION

This is in response to applicant's "Response to Improper Notification of Abandonment" filed 28 July 2004, which is being treated as a petition under 37 CFR 1.181. No petition fee is due.

BACKGROUND

On 30 March 2000, applicant filed international application PCT/GB00/01215. A copy of the international application was communicated to the USPTO from the International Bureau on 11 October 2001. The twenty-month period for paying the basic national fee in the United States expired at midnight on 30 November 2001.

On 30 November 2001, applicant filed national stage papers in the United States Designated/Elected Office (DO/EO/US). The submission was accompanied by, *inter alia*, the basic national fee required by 35 U.S.C. 371(c)(1).

On 24 January 2002, the DO/EO/US mailed a Notification of Missing Requirements Under 35 U.S.C. 371 (Form PCT/DO/EO/905), which indicated that an oath or declaration in compliance with 37 CFR 1.497 must be filed.

On 23 August 2002, applicant filed a petition under 37 CFR 1.497(d) along with an executed declaration.

On 15 November 2002, this Office mailed a decision dismissing the 23 August 2002 petition.

On 24 March 2003, applicant filed a renewed petition along with an executed declaration.

On 09 May 2003, this Office mailed a decision granting the 24 March 2003 petition. The decision stated that properly executed declarations had not been received for all of the applicants.

On 22 May 2003, the DO/EO/US mailed a Notification of Defective Response (Form PCT/DO/EO/916), which indicated that the declaration filed 24 March 2003 was not executed by all of the inventors.

On 20 June 2003, applicant filed a response to the Notification of Defective Response.

On 02 October 2003, the DO/EO/US mailed a Notification of Abandonment (Form PCT/DO/EO/909), which indicated that the application is abandoned for failure to respond to the Notification of Missing Requirements mailed 24 January 2002.

On 08 October 2003, applicant filed a letter in response to the Notification of Abandonment.

On 22 October 2003, this Office mailed a communication which vacated the 02 October 2003 Notification of Abandonment and afforded applicant a two month time period in which to file executed declarations.

On 05 December 2003, applicant purportedly filed executed declarations.

On 02 June 2004, the DO/EO/US mailed a Notification of Abandonment (Form PCT/DO/EO/909), which indicated that the application is abandoned for failure to timely respond to the communication mailed 22 October 2003.

On 28 July 2004, applicant filed the present petition under 37 CFR 1.181.

DISCUSSION

The evidence of record is sufficient to establish that the declaration was originally filed on 05 December 2003. Specifically, the copy of the return postcard, which includes a declaration in its itemized contents and which bears a USPTO date stamp of 05 December 2003, serves as *prima facie* evidence that the declaration was received by the USPTO on 05 December 2003.

CONCLUSION

For the reasons above, the petition under 37 CFR 1.181 is GRANTED.

The Notification of Abandonment (Form PCT/DO/EO/909) mailed 02 June 2004 is hereby VACATED.

The application has an International Filing Date of 30 March 2000 and a date under 35 U.S.C. 371 of 05 December 2003.

This application is being forwarded to the United States Designated/Elected Office (DO/EO/US) for further processing in accordance with this decision.



Bryan Tung
PCT Legal Examiner
PCT Legal Office

Telephone: 703-308-6614
Facsimile: 703-308-6459